CF0000064593

(2)

Single Bench (Criminal)

IN THE HIGH COURT OF JUDICATURE AT JABALPUR

CRIMINAL APPEAL NO. 1743 of 2000

APPELLANT: In Jail

Chandra Kumar Dhohi, S/o Sadanand Dhobi, aged 22 years, R/o Barapeepal, Police Station Dabhara, District Janjgir Champa, Madhya Pradesh.

(7111)

Filed on 10/12/00 by Shri B. Dubey Advocate

Versus

RESPONDENT:

State of Madhya Pradesh, Through: District Magistrate, Raigarh.

MEMORANDUM OF CRIMINAL APPEAL UNDER SECTION 20(b)(I) OF N.D.P.S. ACT 1985

(20)

IN THE HIGH COURT OF JUDICATURE CHHATTISGARH ; BILASPUR

CRIMINAL APPEAL NO.1743 OF 2000

Chandra Kumar Dhohi

Versus

The State of Madhya Pradesh
(now Chhattisgarh).

ORAL JUDGMENT

Per R.S. Garg, J :-

By this appeal, the appellant seeks to impugn the correctness, validity and propriety of the judgment dated 13/06/2000 passed in Special Case No.11 of 1999 by the learned Special Judge (NDPS) Raigarh convicting the appellant under Section 20 (b)(i) of the Narcotic Drugs and Psychotropic Substances Act, 1985 and sentencing him to undergo rigorous imprisonment for two years and six months and pay fine of Rs.500/-, in default of payment of fine to undergo rigorous imprisonment for three months.

(2) The prosecution case in brief is that on 28/08/1999 D.K. Musharif (PW-7) the Town Inspector posted at Police Station Raigarh, received an information from the informer that the present appellant was standing at the Bus Stand and was trying to sell Ganja. After receiving the information said D.K. Musharif prepared a Panchanama of the information, sent a copy of the same to his superior officer, made the entries in Rojnamcha and proceeded towards the spot. After giving notice under Section 50 of the Act the search of the accused was taken. The accused appellant was found in possession of

two kilogram Ganja. Samples were drawn, the accused, the contrabands and the witnesses were brought to the police station where Dehati Nalish, already registered, was converted into the first information report, the articles were given for the safe custody and under the directions of the Superintendent of Police the articles were sent for their chemical analysis. After receiving the FSL report the police agency filed the challan against the appellant. As the accused abjured his guilt, he was put to trial. After recording the evidence and hearing the parties, the learned trial Court convicted and sentenced the accused as referred to above.

(3) Shri Vivek Ranjan Tiwari, learned counsel for the appellant, submits that as the mandatory provisions of the Act were not complied with the conviction of the appellant and award of the sentence are bad.

(4) On the other hand, Shri Ranveer Singh, learned Govt. Advocate, for the State, submits that from the statements of D.K. Musharif (PW-7) it would clearly appear that every mandatory provision was scrupulously followed and there is no scope for interference in the findings recorded by the trial Court.

(5) I have heard the parties.

(6) From the statements of D.K. Musharif (PW-7) it would clearly appear that after receiving the information he recorded the same in the Rojnamcha (Ex.P/8), sent the information to the Superintendent of Police under Ex.P/9 and started towards the spot. This fact is again recorded in the Rojnamcha Sanha produced in the Court as Ex.P/10. After reaching the spot PW-7 D.K. Musharif gave Ex.P/6 to the

accused under Section 50 of the Act. His consent was obtained under Ex.P/12 and the search was effected under Ex.P/3. After recovery of Ganja it was weighed on the spot under Ex.P/5. Two samples of 25 gram each were drawn and were sealed under Ex.P/2. After seizure the seal were affixed and on the seizure memo itself the impression of the seal was affixed. Ex.P/13 Dehati Nalish was recorded on the spot. After return from the spot the entries were again made in the Rojnamcha Sanha (Ex.P/11). The FIR was registered at Ex.P/14 and the required informationsunder Section 52/57 of the Act were sent to the official superior so also to the Court under Ex.P/7.

(7) True, it is that the independent witnesses Raju (PW-2) and Tilakram (PW-4) did not support the prosecution case but from the statements of the other witnesses it would clearly appear that PW-7 D.K. Musharif proceeded to the spot, effected the search, made the seizure and brought the accused with the contraband to the police station. From the FSL report (Ex.P/17) the correctness of which was neither challenged before the trial Court nor before this Court, it would clearly appear that the articles seized from the accused was Ganja. After going through the entire evidence especially the statements of PW-7 D.K. Musharif I am unable to hold that the Court below was unjustified in recording the findings against the accused appellant. I confirmed the said findings.

(8) At this stage, Shri Tiwari, learned counsel for the appellant, submits that the appellant is in jail since 29/08/1999, therefore The jail sentence be reduced to the period already undergone.

(9) Shri Ranveer Singh, learned counsel for the

State, on the other hand, submits that looking to the quantity of Ganja it cannot be held that the jail sentence suffers with the vice of excessiveness.

(10) The appellant remained in jail with effect from 29/08/1999 as an under-trial prisoner up to 30th June 2000. Since thereafter he is in jail as a convict. During last 15 months the appellant must have earned the remission of almost about three months or little more. By now he must have undergone about two years and three months or little more.

(11) Taking into consideration the period already undergone by the appellant, I consider present to be a fit case for reducing the jail sentence from 2½ years R.I. to the period already undergone.

(12) While affirming the fine amount and the default sentence I reduce the substantive jail sentence to the period already undergone. If the appellant has already deposited the fine amount then he be immediately released, if not required in any other case and if he has not deposited the fine amount he be required to undergo the default sentence.

(13) The appeal to the extent indicated above is allowed. Records of the Court below be immediately sent back with a copy of this order enabling the trial Court to take immediate steps in accordance with the directions of this Court.

Sd/-
R.S. Garg
Judge

10/09/2001.

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